NO. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

HUMBLE OIL & REFINING COMPANY, ET AL, *Petitioners*

v.

SUN OIL COMPANY, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The official findings of fact and conclusions of law of the District Court, filed under Rule 52(a), in lieu of an opinion, are found in the record.[1] Petitioners moved to

1. R. 1829-68.

strike the Findings;[2] whereupon the District Judge filed an additional "Memorandum on Defendants' Motion to Strike Findings of Fact."[3] The opinion of the Court of Appeals on original submission is reported 190 F.(2d) 191;[4] on motion for rehearing, at 191 F.(2d) 705, to which we particularly direct attention.[5]

QUESTION PRESENTED

Is the land in controversy "submerged", so that it belongs to the State of Texas? The findings of the two lower courts are that "sea water rolls over the entire area throughout the year, irrespective of storms or rainfall."[6] The local law, to be applied, is the civil law of Spain, derived from the Roman law; provides:

> "All that ground is designated the shore of the sea which is covered with the water of the latter during the whole year, whether in winter or in summer."[7]

JURISDICTION

(a) This is no case for certiorari, for the reason that it is only a fact case. The existence of inland sea waters over the land "throughout the year, irrespective of storms

---

2. R. 1868-75.

3. R. 1880-94.

4. R. 1932-44.

5. 2181-2206.

6. R. 1840, 1939; 190 F. 2d 197.

7. State v. Balli, 144 T. 195, 251; 190 S. W. 2d 71, 100. R. 1859-63, 1933-7, 190 F. 2d 193-5.

or rainfall," is the controlling fact; found by both lower courts.[6] "There is no grass or plant life of any kind in the entire area, except upon the islands."[6] To the facts must be applied the local law, derived from Spain and the Romans:

> "All that ground is designated the shore of the sea which is covered with the water of the latter during the whole year, whether in winter or in summer."[7]

(b) This is no case for certiorari, for the reason that petitioners "do not assert a grant from any sovereign to this controverted area; but they claim it by accretion * * *. The burden of proving this was on appellants (petitioners); and we think, upon the undisputed facts, that they failed to meet this burden."[8]

(c) This is no case for certiorari, for the reason that the action is purely local. "In fact, land law has always been deemed a matter of local sovereignty." Both lower courts correctly applied the local law as settled by the highest courts of Texas.[9]

(d) This is no case for certiorari, for the reason that the petition presents merely a plea for another review of the case. But the case was reviewed by the trial court for three months, from January 9th to May 18, 1950;

---

6. R. 1840, 1939; 190 F. 2d 197.

7. State v. Balli, 144 T. 195, 251; 190 S.W. 2d 71, 100. R. 1859-63, 1933-7, 190 F. 2d 193-5.

8. R. 1942-3, 190 F. 2d 199.

9. R. 1859-67, 1933-41, 2189; 191 F. 2d 713.

reviewed by the Court of Appeals for five months, with two opinions.

(e) The controlling fact which the two lower courts concurred in finding, that "sea water rolls over the entire area throughout the year,"[10] is not in conflict with any other decision, local or national.

(f) This is no case for certiorari, for the reason that the case must be decided upon its own peculiar facts; that is, the concurrent findings of the two lower courts that "there is a regular movement of sea water, repeated many times throughout the year, over all or a part of the lands in controversy,"[11] to which must be applied the applicable civil law:

> "All that ground is designated the shore of the sea which is covered with water of the latter during the whole year, whether in winter or in summer."[12]

(g) This is no case for certiorari, for the reason that it is obvious that the case was correctly decided below by both lower courts, in that they concurred in finding as a fact that "sea water rolls over the entire area throughout the year";[13] to which both courts applied the civil law of Spain, derived from the Romans:

---

10. R. 1840, 1939; 190 F. 2d 197.
11. R. 1840, 1940; 190 F. 2d 197.
12. State v. Balli, 144 Tex. 195, 251; 190 S.W. 2d 71, 100.
13. R. 1840, 1939; 190 F. 2d 197.

"By the civil law, the shore extends as far as the highest waves reach in winter."[14]

STATEMENT

We refer the Court to the map which is attached as an appendix to this brief. It is a reduced copy of Plaintiff's Exhibit 3 in the trial court, and will be so referred to throughout this brief.[15]

This map reflects fact findings of the two lower courts in the following particulars:

(a) The Big Barreta, the Little Barreta and the Mirasoles grants on the mainland are on the west side of the map. "The location on the ground of the grants of Big Barreta, Little Barreta and Mirasoles is fixed by the findings of the trial court so that the east lines at no place conflict with the west lines of the state sections in Laguna Madre as located by the State and delineated on a map in the General Land Office * * *."[16] The Big Barreta was granted in 1804 by the Sovereignty of Spain; the Little Barreta in 1834 by the Republic of Mexico, and the Mirasoles in 1832 by the Republic of Mexico. It was during this period that the civil law of Spain, derived from the Roman civil law, was in force in both the Sovereignties of Spain and Mexico.[17] The determination of whether or

---

14. R. 1859-63, 1935-6; 190 F. 2d 194-5; Borax Consolidated v. City of Los Angeles, 296 U. S. 10, 22; 56 S. Ct. 23, 80 L. Ed. 9.

15. R. 166-72, 187, 1836.

16. R. 1843-57, 1864-5, 2195; 191 F. 2d 715-6.

17. R. 1843-57, 1859-60, 1934-5; 190 F. 2d 194; R. 2195, 191 F. 2d 715-6.

not the sea has abandoned Laguna Madre must be tested by the rules of the civil law of Spain, derived from the Roman law.[18] The Spanish law is collected in *Las Siete Partidas*, and is *Law IV, Title 28, Third Partidas*, relating to real property.[19]

(b) Laguna Madre is an inland arm of the sea, bounded on the west by the mainland; on the east by Padre Island.[20] The lower courts concurred in finding as a fact:

> "Waters of the Laguna Madre stand throughout the year from Corpus Christi Bay on the North to a point approximately even with the south end of Lopena Island; and from the Brazos-Santiago Pass near Brownsville, on the South, to and including Redfish Bay, at a point less than one mile from Block 369, one of the tracts in controversy here. (Plaintiff's Exhibit 3). *It is from these passes and bays that sea water rolls over the lands in controversy, throughout the year, driven by the prevailing winds.* * * *
>
> "The water is extremely salty. It covers all or a part of the land in controversy (and the lands leased by Humble as well as portions of Padre Island and within Boyles' line) for substantial and appreciable portions of the year. * * *
>
> "* * * *Sea water rolls over the entire area throughout the year, irrespective of storms or rainfall. Movement of this sea water over the entire area is formidable, the pictures resembling general coastal water with considerable waves.*

---

18. R. 1859-63, 1933-7, 190 F. 2d 193-5.

19. State v. Balli, 144 Tex. 195, 250; 190 S.W. 2d 71, 100.

20. R. 1834-5, 1837, 1937-8; 190 F. 2d 196.

"* * * *There is a regular movement of seawater repeated many times throughout the year over all or part of the lands in controversy, with regularity*, according to the prevailing winds * * *."[21]

(c) Official maps issued by the State and Federal Governments, from the earliest date to as late as 1941, show Laguna Madre to be an inland arm of the sea, situated between Padre Island on the east and the mainland on the west.[22] Among these are:

(1) The official Land Office Map of Texas for Cameron County for the year 1913;[23]

(2) The same for Kenedy County for the year 1913;[24]

(3) The same for Willacy County for the year 1921;[25]

(4) The official Land Office Map of Texas, styled "Sheet No. 3", issued in September, 1947;[26]

(5) The official map of the United States Coast & Geodetic Survey, No. 1287, fourth edition, issued in July, 1941.[27] On this map Laguna Madre is colored in blue,

---

21. R. 1838-9, 1939-40; 190 F. 2d 197.
22. R. 1833-7, 1842, 1938; 190 F. 2d 196.
23. P. Ex. 81, Orig.; R. 422-3.
24. P. Ex. 80, Orig.; R. 420-1.
25. P. Ex. 82, Orig.; R. 423.
26. P. Ex. 624, Orig.; R. 1854.
27. P. Ex. 84, 85, 86, 691, Orig.; R. 433-7, 1038-40.

covering the entire area bounded on the east by Padre Island, on the west by the mainland. It is identified by H. A. Marmer, now connected with the United States Coast & Geodetic Survey.[28]

(6) The official map of the United States Geological Survey, compiled in 1922, which shows Laguna Madre colored in blue, representing water in the entire area bounded on the east by Padre Island and on the west by the mainland, as shown on Plaintiff's Exhibit 3.[29]

(7) The official map of the United States War Department, prepared by Lt. Meade (subsequently Lt. Gen. Meade), who in 1846, for General Taylor's army, prepared a map and report of that portion of Laguna Madre shown on Plaintiff's Exhibit 3.[30]

(Petitioners go entirely out of the record and file here a map which was not introduced in evidence; which this respondent has had no opportunity to cross examine; which on its face shows that it is unofficial, in that it recites, "Subject to correction after verification and review." On the face of this map is a legend: "Water stages in this area vary widely with meteorological conditions. * * * The broken line indicates the approximate inshore limits of areas subject to inundation." Study of the "broken line" reveals that the area colored green is

---

28. R. 1038-40.

29. P. Ex. 685, Orig.; R. 960-1.

30. P. Ex. 88-9, Orig.; R. 440-52, 1842, 1943; 190 F. 2d 199.

the same as the area in blue on Plaintiff's Exhibit 3. Furthermore, it is the very fact that "water stages in this area vary widely with meteorological conditions" that the two lower courts concur in finding that "sea water rolls over the entire area throughout the year, irrespective of storms or rainfall. Movement of this sea water over the entire area is formidable, the pictures resembling general coastal water with considerable waves."[31] This variance "with meteorological conditions" is what the Court of Appeals speaks of in its original opinion: "Meteorological influences may be inextricably involved with the rise and fall of the true astronomical tide, but we should distinguish them as meteorological tides."[32] We submit the unsworn, unproved, unofficial "advance print" filed herein by petitioners crucifies, rather than helps, them.

(8) The United States Government to this hour accepts the area colored in blue on Plaintiff's Exhibit 3 to be a part of the inland waters of Laguna Madre. Beginning in 1947 and continuing to 1949, the United States Government dredged a canal, which is shown on Plaintiff's Exhibit 3 traversing the very area in controversy here and marked, "Center Line of Intracoastal Waterway."[33]

---

31. R. 1840, 1939; 190 F. 2d 197.

32. R. 1936; 190 F. 2d 195.

33. R. 1937-8; 190 F. 2d 196.

That the inland waters of Laguna Madre are within the boundaries of Texas is found as a fact by both lower courts.[34] See *State v. Sais*, 47 Tex. 307.[35]

September 11, 1947, the School Land Board of Texas, an agency created by the Texas Legislature, offered the sections within Laguna Madre, "as submerged areas", for lease for the purposes of the development of oil and gas. The offer had to be accepted by written bids filed by November 4, 1947.[36] Petitioner Humble accepted the offer; filed written bids on "submerged" land in Laguna Madre, but in the name of an agent, Averill, instead of in its own name. It bid upon practically all the sections colored in blue on Plaintiff's Exhibit 3—those marked "Humble" and those marked "Sun". It was a successful bidder upon those sections marked "Humble". Following is a tabulation showing the sections bid upon by Humble, and the name of the successful bidder on each section which Humble bid upon:

Sections bid upon by Humble	Successful Bidder
276	Humble
280	Sun
281	Sun
283	Pure-Superior

34. R. 1854-7, 1863, 1867, 1896, 1937; 190 F. 2d 196.

35. Also see Kenedy Pasture Co. v. State, 111 Tex. 200, 231 S.W. 683; Article 5415a, Rev. Civ. Stat. of Tex. 1925.

36. P. Ex. 621, R. 973; R. 1854, 1942; 190 F. 2d 198.

Section bid upon by Humble	Successful Bidder
284	Pure-Superior
285	Pure-Superior
286	Coffield
287	Humble
288	Humble
289	Humble
290	Humble
291	Humble
292	Humble
293	Humble
294	Coffield
295	Sun
296	Sun
297	Sun
298	Sun
300	Sun
301	Sun
302	Sun
303	Humble
304	Humble
305	Humble
306	Humble
307	Humble
308	Humble
309	Humble
310	Sun

Section bid upon by Humble	Successful Bidder
311	Sun
312	Sun
313	Humble
314	Sun
315	Humble
316	Sun
317	Sun
318	Humble
319	Humble
320	Humble
321	Humble
322	Humble
323	Humble
324	Humble
326	Humble
327	Sun
328	Humble[37]

But petitioner Humble not only admitted that Laguna Madre was "submerged" by filing its written bids—it backed up its belief by more than a million dollars which it posted to pay for its bids upon "submerged" areas.[38]

Having posted written bids and a million dollars in cash for leases upon "submerged" areas, it turned around, and

---

37. R. 1854-7, 1942; 190 F. 2d 198.

38. R. 1855.

at the same time filed with the same state authorities a written letter, dated October 28, 1947, in which it denied that the very land upon which it had bid as "submerged" areas was a part of Laguna Madre.[39]

Is this Court interested in extending its discretion for certiorari to one who has acted in such a way with respect to the identical, same tract of land?

February 3, 1948, the State issued to Sun formal written oil and gas leases on the sections which are involved herein, which are marked "Sun" on Plaintiff's Exhibit 3, cross-hatched, and which are specifically enumerated in Sun's complaint in this cause. For these oil and gas leases, it paid a large sum of money; placed its oil and gas leases of record in Kenedy County, and today is the owner of the leasehold estate of the oil and gas in and under the land described in those leases.[40]

That the petitioner Humble thought that all the sections within Laguna Madre shown on Plaintiff's Exhibit 3 were actually "submerged"; were actually lands beneath the inland waters of Laguna Madre, the property of the State of Texas, is proved, not only by the fact that it posted more than one million dollars in order to procure leases upon said sections, but is further proved by the fact that it was the successful bidder on fifty-six separate sections which are colored in blue on Plaintiff's Exhibit 3 and

---

39. R. 1855, 1942; 190 F. 2d 198.

40. R. 990.

marked "Humble"; that it accepted and paid approximately a million dollars for those fifty-six separate leases;[41] placed those fifty-six separate leases of record in the name of its agent, Averill; procured from its agent, Averill, an assignment to "Humble",[42] and has consecutively since February 4, 1948, paid the annual delay rentals required by the terms and provisions of those fifty-six separate leases.[43] Each of the fifty-six leases accepted by petitioner Humble expressly recited that each section is in "Laguna Madre * * * as shown by the official map of Laguna Madre now on file in the General Land Office."[44]

It will be noted by Plaintiff's Exhibit 3 that these leases marked "Humble" border along the east line of the mainland grants as located by the lower courts; border along the west line of Padre Island; are located north and south of the sections which Sun leased.[45]

Sun filed its amended complaint in equity, seeking to remove the clouds that made its property unsalable and useless, by virtue of the written instruments filed by the petitioners in the public records of Texas, not only in the General Land Office, but also with the School Land Board; also seeking a perpetual injunction against petitioners, to restrain them from interfering with its use of the premises

---

41. R. 139, 143, 147, 1855.

42. R. 144-5.

43. R. 140-1, 147.

44. R. 1855, 1942; 190 F. 2d 198-9.

45. R. 1855-7, 1866.

for the development and production of oil and gas. Sun alleged that it is in possession.[46] The petitioners in their original answer, under oath, effectually admitted respondent is in possession:

> "Defendant alleges affirmatively that, although defendants have advised plaintiff at all times that defendants own the land described in the complaint, defendants have not prevented plaintiff from making surveys of the land in suit and plaintiff actually has surveyed and staked off on the ground the claimed boundaries of the State leases under which plaintiff brings this suit."[47]

The petitioners in their amended answer also alleged:

> "This defendant alleges affirmatively that the area covered by the tracts of land described in the amended complaint *was formerly covered by the waters of Laguna Madre.*"[48]

The trial court not only entered findings of fact, in which it found that Laguna Madre was still a part of the bed of the sea; that the sea had not abandoned Laguna Madre;[49] but also entered decree that the clouds cast upon the title of respondent be removed; that petitioners be perpetually enjoined from interfering with the use and enjoyment of respondents' oil and gas leases for the devel-

---

46. R. 54, 67-8, 1881, 2181; 191 F. 2d 708.

47. R. 53, 54.

48. R. 79, 1933; 190 F. 2d 193.

49. R. 1837-43.

opment for oil and gas.[50] The Court of Appeals expressly approved the findings and decree of the District Court.[51]

I.

THE DECISION BELOW IS CLEARLY CORRECT

(1)

Laguna Madre today is the same as it was when the mainland grants were issued in 1804, 1832 and 1834. Hence the field note calls in the mainland grants to extend eastward to Laguna Madre cannot conflict with it. (Reply to Specification of Error No. 1 of Petitioners.)

Petitioners' specification of error number one does not present any ground for certiorari; does not present any important federal question; on its face presents a matter affected only by local law of Texas.

Petitioners in their answer alleged:

> "This defendant alleges affirmatively that the area covered by the tracts of land described in the amended complaint was formerly covered by the waters of Laguna Madre."[52]

The Court of Appeals adopted the foregoing allegation:

> "The defendants below (appellants here) alleged that the land in controversy was formerly covered by the waters of Laguna Madre."[53]

---

50. R. 1895.
51. R. 1938-40, 1942-4, 2195-6; 190 F. 2d 196-7, 199; 191 F. 2d 716.
52. R. 79.
53. R. 1934; 190 F. 2d 194.

In the Big Barreta the field notes call for the west line of Laguna Madre as its east line;[54] in the Little Barreta its field-note calls, and the sketch of the surveyor, Fuente, show Laguna Madre to be its east line;[55] in the Mirasoles the field notes in its original Mexican grant call for its east line to be Laguna Madre[56].

Those calls were made at a time in 1804, 1832 and 1834 when it is admitted by the petitioner that Laguna Madre occupied the same westward position shown in blue on Plaintiff's Exhibit 3—the present position as the two lower courts found it to be.

"From maps, photographs, aerial mosaics and the personal observation of witnesses, what commonly has been regarded as Laguna Madre, until this controversy, *is clearly defined and readily visible.* * * * The edge of the grass line, where it joins the small sandy beaches on all the islands or portreros *and the mainland*, is clear and abrupt. * * * The water is extremely salty. It covers all or a part of the land in controversy for substantial and appreciable portions of the year. * * * There is a regular movement of seawater repeated many times throughout the year over all or part of the lands in controversy, with regularity * * *."[57]

---

54. R. 1843-7.

55. R. 1850-1; P. Ex. 5, 6, 64, Orig.; R. 183-4, 318, 1503-4.

56. D. Ex. 7, 8; R. 1136, 1804, 1848.

57. R. 1837-40.

The Court of Appeals expressly approved these findings in its own language:

> "From maps, photographs, aerial mosaics, and the oral testimony of witnesses, the court below found what commonly has been regarded as Laguna Madre, prior to this controversy, *is clearly defined and easily visible.*"[58]

Notwithstanding the mainland grants when issued in 1804, 1832 and 1834 each called for their east lines to stop at Laguna Madre;[59] notwithstanding that to now locate each of those grants by their distance calls in their original and patented field notes, free of conflict with the State Sections in Laguna Madre, gives to the petitioners 20,950.6 acres in excess of the acreage called for in the respective grants;[60] the petitioners nevertheless would now extend those same mainland grants eastward to intersection with Padre Island and take in another and additional 55,000 acres of land.[61] Notwithstanding that the Mexican surveyor, Fuente, who surveyed the Little Barreta and the Mirasoles in 1832 and 1834, respectively, and called for their east lines to stop at Laguna Madre, also surveyed Padre Island in 1829, and called for its west line to be bounded by Laguna Madre;[62] showed by his field-note sketches of his mainland grants of Little Barreta and Mirasoles,[59] as well as his field note sketch of Padre Island,[62]

---

58. R. 1938-40; 190 F. 2d 196-7.
59. See Footnotes 54, 55, 56.
60. R. 212.
61. R. 1183-8, 1836; D. Ex. 20, Orig.
62. 144 Tex. 195, 205-6; 190 S. W. 2d 71, 75-6.

that Laguna Madre separated Padre Island from the mainland, the petitioners would extend the mainland grants eastward to intersection with the west line of Padre Island,[61] so that, as the trial court found:

> "This would result in an absolute closure of the East line of the mainland with the West line of Padre Island. Padre Island would no longer be an Island. It would result not only in loss by the State of fifteen to sixteen thousand acres leased to Sun, but over thirty-six thousand acres leased to Humble and approximately four thousand acres leased to others in the immediate area; and an undeterminable amount of land in other areas along the coast West of Padre Island."[63]

Because the Big Barreta, the Little Barreta and the Mirasoles were issued by the Sovereignties of Spain and Mexico; because Padre Island was issued by the Sovereignty of Mexico, the local law of Texas requires that the law of Spain, derived from the Roman civil law, be applied to the fact findings of the two lower courts: "The rule is an elementary one that, in determining the rights of holders of title under Mexican grants, the laws of Mexico in effect when the grants were made control." *Manry v. Robison*, 122 Tex. 213, 221, 56 S.W. (2d) 438, 442.

The latest pronouncement by the Supreme Court of Texas is *State v. Balli*, 144 Tex. 195, 248; 190 S.W. (2d) 71, 99:

---

63. R. 1836.

> "It is clear from the decisions of this court that the rights of the state and respondents must be determined in the light of the civil law in effect *at the time of the grant* as it existed in the state of Tamaulipas."

That this civil law must be applied in the instant case is not now contested by the petitioners. But what civil law?

> "The Roman law, including the Institutes of Justinian, was the basis of the Partidas and the laws of Spain and Mexico." *Manry v. Robison*, 122 Tex. 213, 223; 56 S. W. (2d) 438, 442.

In the most recent case of *State v. Balli*, 144 Tex. 195, 248, 190 S.W. (2d) 71, 99:

> "It cannot be doubted that the law as incorporated in Las Siete Partidas was in effect in the State of Tamaulipas at the date of the grant (of Padre Island). In fact, on September 21, 1821, when Mexico gained its independence, the Spanish municipal law was in effect and so continued until the State adopted its first civil code on June 29, 1871."

Therefore, in 1804, when the Sovereignty of Spain issued the title to Big Barreta; in 1829, 1832 and 1834 when the Republic of Mexico issued the grants to Padre Island, Little Barreta and Mirasoles, "the Spanish municipal law was in effect."

The Spanish municipal law, collected into *Las Siete Partidas*, was given an official translation in 1555.[64] The

---

64. Gregorio Lopez, Official Translation, first published at Salamanca in 1555. His edition was made official by royal decree of Sept. 7, 1555. See **Bibliography** by John Vance (Law Librarian of Congress), p. 1xx, **Las Siete Partidas**, translated by S. P. Scott for the Comparative Law Bureau of The American Bar Association; Publ. by Commerce Clearing House, 1931.

portions of it dealing with real property were derived exclusively from the Roman law.[65]

The Roman law with which we are concerned is found in the *Institutes of Justinian, Book II, Title 1, Section III,* and in the *Digests* of the Roman law, *Book 50, Title 16, Section 112*:

> "By the civil law, the shore extends as far as the highest waves reach in winter."[66]

The translation of the *Institutes of Justinian, Book II, Title 1, Section III,* by Thomas Cooper, in 1852, is:

Latin	English
"Est autem littus maris, quatenus hybernus fluctus maximus excurrit."	"All that tract of land over which the greatest winter flood extends itself, is the seashore."

In *Angell on Tidewaters, page 68* (2d ed., rev. 1847),[67] the section of the *Institutes of Justinian* is translated:

Latin	English
"Est autem littus maris, quatenus hibernus fluctus maximus excurrit."	"The shore, it is understood, includes the land as far as the greatest wave extends itself in the winter."

---

65. **Las Siete Partidas,** Trans. by S. P. Scott; **Introduction** by Charles Sumner Lobingier, p. liv.

66. **Borax Consolidated v. City of Los Angeles,** 296 U.S. 10, 56 S. Ct. 23, 80 L. Ed. 9; R. 1935, 190 F. 2d 195.

67. This authority, **Angell on Tidewaters,** has been expressly cited and approved by the Supreme Court of Texas. **City of Galveston v. Menard,** 23 Tex. 349.

The Court of Appeals in this case has a translation of this section of the *Institutes of Justinian*:

Latin	English
"Est autem littus maris, quatenus hibernus fluctus maximus excurrit."	"However, the shore of the sea in the fourth quarter or winter is where the highest wave extends."[68]

The Court of Appeals in this case also has a translation of the Roman law as it is found in the *Digest, Book 50, Title 16, Section 112*:

> "The public shore extends up to where the highest wave boils up or foams."[69]

It is to be noted that, "The reference is not to waves or sea water in a storm but in an estuary, or exit to the sea, as when the water boils up where the tide meets the current of a river."[69]

It is obvious that the Romans were not concerned with astronomical or lunar tides. The Romans were concerned only with the presence of sea water as their measurement of the bed of the sea. At no place in the Roman civil law is there any reference to or effect given to astronomical tides. It is only in the common law of England that astronomical tides are given effect. Petitioners have tried this litigation all the way on the English common law—not on the civil law.

---

68. R. 1935; 190 F. 2d 195.

69. R. 1935-6; 190 F. 2d 195.

When the Spaniards collected the Roman law into *Las Siete Partidas* and included *Law IV, Title 28, Third Partidas*, dealing with the measurement of the bed of the sea, we find these translations:

Gregorio Lopez, Official Translation, 1555:

> "And all that land is designated as the shore of the sea which is covered by the water of the latter in its highest swells, during the whole year, whether in winter or in summer."[70]

The Gregorio Lopez translation from the Latin into English:

> "But only that part of the land covered by the highest swells in perennial agitation during the winter, as well as during the strong but customary summer storms."[71]

Lislet & Carleton, 1820:

> "And by the seashore is understood all that space of ground covered by the waters of the sea in their highest annual swells, whether in winter or summer."[72]

---

70. See Footnote 64.

71. Lopez Glossary, Recognized as the authoritative interpretation of Las Siete Partidas; Spanish Translation Publ. Barcelona, 1843-4 (See Vance, **Bibliography, Scott's Partidas**, p. lxxxii.).

72. **The Laws of Las Siete Partidas**, which are still in force in the State of Louisiana, translated from the Spanish by L. Moreau Lislet and Henry Carleton; printed by James M'Karaher, New Orleans, 1820. (See Vance's, **Bibliography, Las Siete Partidas**, trans. by S. P. Scott, p. xciv.).

Joseph M. White's Translation, 1839:

> "By the shore of the sea we understand whatever part of it is covered with water, whether in winter or summer."[73]

The *Joseph M. White Translation of 1839* has been expressly adopted by the Supreme Court of Texas in *State v. Balli*, 144 Tex. 195, 250, 251, 190 S.W. (2d) 71, 100:

> " 'By the shore of the sea we understand whatever part of it is covered with WATER, whether in winter or summer.' * * * (1 White's Recopilacion, p. 70)
>
> "Thus the seashore was no part of the land, but always an adjunct of the sea. * * * The seashore was defined to be 'all that ground is designated the shore of the sea which is covered with WATER of the latter during the whole year, whether in winter or in summer.' "

It is to be noted that the Spaniards were not concerned with astronomical tides. They were concerned, precisely as the Romans were concerned, with nothing but sea water; the extent to which the waves of the sea rolled in normal times.

The two lower courts in this case applied the foregoing civil law of the Romans and of the Spaniards, as collected by the latter in *Law IV, Title 28, Third Partidas;* concluded, both from the facts and from the applicable local

---

73. "White's **Recopilacion**", "A new Collection of Laws, Charters and Local Ordinances of the Governments of Great Britain, France and Spain, Relating to the Concessions of Land in their Respective Colonies; Together with the Laws of Mexico and Texas on the Same Subject. To which is Prefixed Judge Johnson's Institutes of the Civil Law of Spain"; T. & J. W. Johnson, Law Booksellers, Philadelphia, 1839.

law, that Laguna Madre covered the area that is colored in blue on Plaintiff's Exhibit 3; exactly the same area that was covered in 1804, 1832 and 1834, when the grants were issued on the mainland; in 1829, when the grant was issued to Padre Island.[74]

Is this Court interested in again reviewing the same facts and local law?

(2)

There can be no accretion to the bed of the sea. (Reply to Petitioners' Specification of Error No. 2.)

Petitioners' specification of error number two presents nothing but a matter of fact which has been resolved adversely to petitioners by the concurrent findings of both lower courts; presents no federal question whatever; presents only a matter of application of the local law to the facts as found by the two lower courts; presents no conflict upon the same state of facts with any decision of either state or federal courts.

The facts which exist here are peculiar to this case, and hence of no national importance.

But the lower courts were correct in holding that there is not any accretion to the mainland grants, both as a matter of fact and as a matter of local law.

Once it was determined by both lower courts that the waters of the sea still roll over Laguna Madre, as shown in

---

74. R. 1859-60, 1862-3, 1865, 1933-44; 190 F. 2d 193-9.

Joseph M. White's Translation, 1839:

> "By the shore of the sea we understand whatever part of it is covered with water, whether in winter or summer."[73]

The *Joseph M. White Translation of 1839* has been expressly adopted by the Supreme Court of Texas in *State v. Balli*, 144 Tex. 195, 250, 251, 190 S.W. (2d) 71, 100:

> " 'By the shore of the sea we understand whatever part of it is covered with WATER, whether in winter or summer.' * * * (1 White's Recopilacion, p. 70)
>
> "Thus the seashore was no part of the land, but always an adjunct of the sea. * * * The seashore was defined to be 'all that ground is designated the shore of the sea which is covered with WATER of the latter during the whole year, whether in winter or in summer.' "

It is to be noted that the Spaniards were not concerned with astronomical tides. They were concerned, precisely as the Romans were concerned, with nothing but sea water; the extent to which the waves of the sea rolled in normal times.

The two lower courts in this case applied the foregoing civil law of the Romans and of the Spaniards, as collected by the latter in *Law IV, Title 28, Third Partidas;* concluded, both from the facts and from the applicable local

---

73. "White's **Recopilacion**", "A new Collection of Laws, Charters and Local Ordinances of the Governments of Great Britain, France and Spain, Relating to the Concessions of Land in their Respective Colonies; Together with the Laws of Mexico and Texas on the Same Subject. To which is Prefixed Judge Johnson's Institutes of the Civil Law of Spain"; T. & J. W. Johnson, Law Booksellers, Philadelphia, 1839.

law, that Laguna Madre covered the area that is colored in blue on Plaintiff's Exhibit 3; exactly the same area that was covered in 1804, 1832 and 1834, when the grants were issued on the mainland; in 1829, when the grant was issued to Padre Island."[74]

Is this Court interested in again reviewing the same facts and local law?

(2)

There can be no accretion to the bed of the sea. (Reply to Petitioners' Specification of Error No. 2.)

Petitioners' specification of error number two presents nothing but a matter of fact which has been resolved adversely to petitioners by the concurrent findings of both lower courts; presents no federal question whatever; presents only a matter of application of the local law to the facts as found by the two lower courts; presents no conflict upon the same state of facts with any decision of either state or federal courts.

The facts which exist here are peculiar to this case, and hence of no national importance.

But the lower courts were correct in holding that there is not any accretion to the mainland grants, both as a matter of fact and as a matter of local law.

Once it was determined by both lower courts that the waters of the sea still roll over Laguna Madre, as shown in

---

74. R. 1859-60, 1862-3, 1865, 1933-44; 190 F. 2d 193-9.

blue on Plaintiff's Exhibit 3, this case terminated. The existence of that fact and the application of the local civil law concluded the case entirely; it determined that the land was still a part of the inland waters of the sea within Laguna Madre, the determination of which conclusively prevented the possible existence of any accretion.[75]

> "Thus the seashore was no part of the land, but always an adjunct of the sea. The classification of the sea and the shore of the sea as common property is as old as *the oldest Roman law*, but by its very nature and meaning there could never be an accession to the seashore as the seashore was defined in the law of Spain, which was effective in Tamaulipas when the grant (of Padre Island) in this case was made. The seashore was defined to be 'all that ground is designated the shore of the sea which is covered with *water* of the latter during the whole year, whether in winter or in summer.'" *State v. Balli*, 144 Tex. 195, 251; 190 S.W. (2d) 71, 100.

It is the foregoing pronouncement of the local law by the Supreme Court of Texas that the Court of Appeals was following in this case in its original opinion when it said:

> "The appellants (petitioners here) do not assert a grant from any sovereign to this controverted area, but they claim it by accretion to the shore of the mainland. * * * The burden of proving this was on appellants; and we think, upon the undisputed facts, that they failed to meet this burden."[76]

---

75. R. 1841-3, 1863, 1865, 1942-4; 190 F. 2d 199.

76. R. 1942-3; 190 F. 2d 199.

Petitioners failed to meet the burden, for the simple reason that the findings of fact by the two lower courts that the inland waters of the sea still cover Laguna Madre as much as nine months in the year, and hence by the applicable civil law Laguna Madre is still an inland arm of the sea, thereby under the rule announced in *State v. Balli* prevents accretion to the bed of the sea. That is to say, regardless of the fact that elevations in places may have been one inch or more above sea level—not above sea water—is of no consequence, just so long as the waters of the sea still continue to roll on and over this elevated land; just so long as "the water is extremely salty"; just so long as the water of the sea "covers all of the land in controversy for substantial and appreciable portions of the year"; just so long as this water at times "contains literally millions of seafish, seagulls and pelicans are seen feeding on fish"; just so long as "the water varies from three or four inches to many feet in depth"; just so long as "seaplanes can and have landed upon it" and "boats navigate it safely"; just so long as the "waters of the south and north basins are joined"; just so long as "the various islands are isolated by water"; just so long as the recession of the water leaves "salt" deposited, whereupon "fish die, and all of the area, except that on the beaches, is mud, sand and leathery algae"; just so long as "there is no grass or plant life of any kind in the entire area, except upon the islands", there cannot possibly be any accretion.[77]

---

77. R. 1837-43, 1863, 1865, 1938-40, 1942-4; 190 F. 2d 196-7, 199.

On the opposite page is Plaintiff's Exhibit 614,[78] a picture of the witness Tanner's seaplane taking off from the waters of Laguna Madre on April 5, 1949, just northwest of Toro Island, within a part of Sun Section 302 or the north end of Sun Section 310. Does it appear the sea has abandoned Section 302 and 310? Can there be accretion under these waves of the sea?

The mere elevation of land does not constitute accretion. There must be contiguity of the alleged "accretion" to the mainland grants. *Fulton v. Frandolig*, 63 Tex. 330.

> "Because a portion of the sea has no shore, it does not follow that it has no bed. The area in controversy was formerly the bed of the sea. The burden on the appellants was two fold: first, to prove that the sea had abandoned this area; second, to prove that appellants had acquired it by accretion or reliction. According to the findings below, the appellants did not meet either burden. * * *"[79]
>
> "'The line of demarcation between the Laguna and the Mainland is still patent for all to see. The area in controversy * * * is not fast land.'"[80]

The trial court found:

> "I am of the opinion, and so find that there has not been any substantial change or building up of the area since the original surveys."[81]

---

78. Orig. filed with Record.
79. R. 2196; 191 F. 2d 716.
80. R. 2195; 191 F. 2d 716.
81. R. 1842.

ibit 614,[78] a
ing off from
, just north-
ction 302 or
pear the sea
ere be accre-

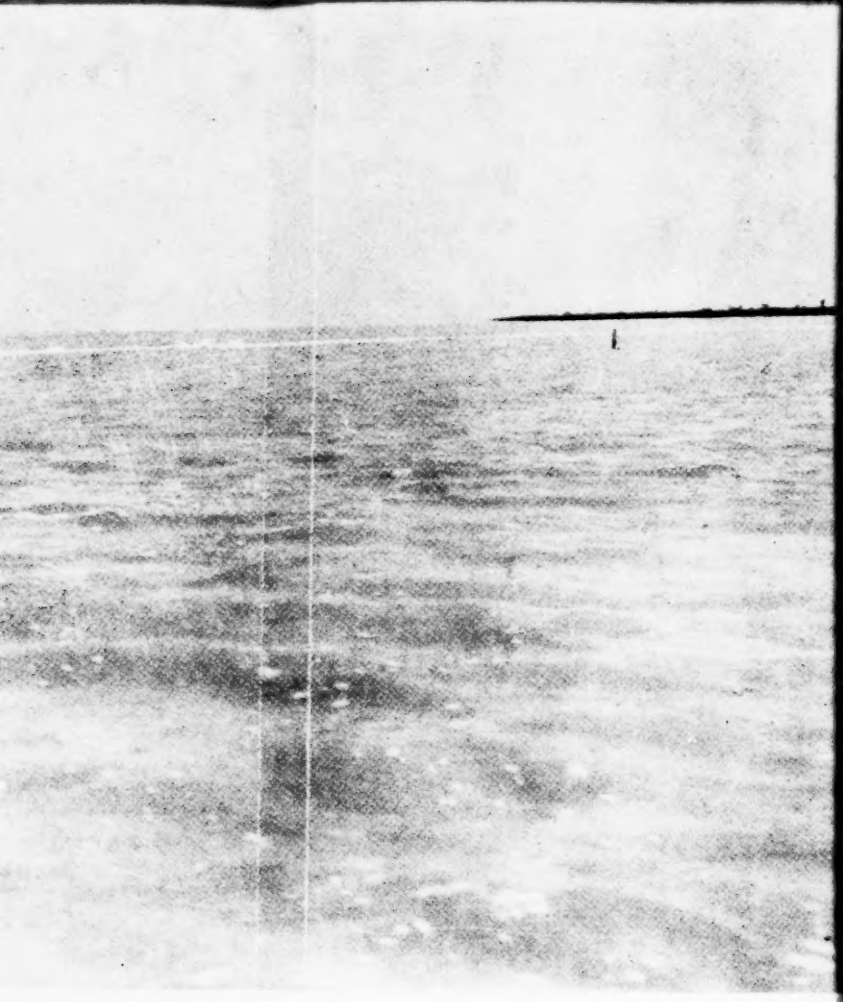
te accretion.
tion" to the
330.

ore, it does
controversy
rden on the
that the sea
that appel-
liction. Ac-
ants did not

Laguna and
e. The area

here has not
g up of the

Does it appear from t
of the sea have aband
Island in Sun Sections



this picture that the inland waters
ndoned Laguna Madre around Toro
s 301, 302, 310 and 311?

The Court of Appeals, after making its own independent finding "upon the undisputed facts" that appellants failed to meet the burden of showing accretion, went on to say:

> "If we are incorrect about this as a conclusion of law, and contrary reasonable inferences may fairly be drawn from the undisputed evidence, then the lower court's finding as to the alleged accretions is against appellants; and *we cannot say that it is clearly erroneous, the finding being that there has not been any substantial change or building up of the area since the original surveys.*"[82]

Is this Court interested in certiorari in a matter that is purely factual, and about which the facts have been concurred in by two lower courts; to which there is nothing to be applied except the local law, which the two lower courts have properly applied?

(3)

The respondent Sun proved a title by formal conveyance from the State of Texas, which owns the lands under the inland waters of Laguna Madre. (Reply to Petitioners' Specification of Error No. 3.)

Petitioners' specification of error number three presents a matter that could apply only to this case and the parties here; of no national importance whatever; involving no federal law of any kind; a matter of local land law, and hence presents no reason for certiorari.

---

82. R. 1943; 190 F. 2d 199.

But the two lower courts were correct in finding, both as a matter of fact and law, that respondent Sun had proved a valid conveyance from the State of Texas, which is the owner of the land under the inland waters of Laguna Madre.[83]

> "The soil covered by the bays, inlets and arms of the Gulf of Mexico, within tidewater limits, belongs to the State, and constitutes public property which is held in trust for the use and benefit of all the people." *Lorino v. Crawford Packing Co.*, 142 Tex. 51, 56, 175 S.W. (2d) 410; *Landry v. Robison*, 110 Tex. 295, 219 S.W. 819; *City of Galveston v. Mann*, 135 Tex. 319, 143 S.W. (2d) 1028.

Acts 1939, 46th Legislature, page 465, section 5, now *Article 5421c-3, Revised Statutes of Texas, 1925* provides: "The mineral estate * * * within tidewater limits, * * * including islands, lakes, bays, and the bed of the sea, belonging to the State of Texas, are hereby set apart and dedicated to the permanent school fund."[83a]

When the trial court and the Court of Appeals concurred in finding as a fact that "there is a regular movement of sea water, repeated many times throughout the year, over all or part of the lands in controversy," and applied the local law, it thereby fixed the ownership of the lands beneath the inland waters of Laguna Madre to be in the State of Texas, subject to the oil and gas leases

---

83. R. 1863, 1944; 190 F. 2d 199.

83a. R. 2195; 191 F. 2d 716.

which it had executed and delivered to the respondent Sun.[84]

The title of the respondent Sun is reflected by:

(1) Formal written oil and gas leases from the State of Texas to it, dated February 3, 1948, for which it paid the aggregate sum of $780,915.60;[85]

(2) The proof by it that the lands described in its oil and gas leases are beneath the inland waters of Laguna Madre;[86]

(3) By the application of the local law, which requires that these lands beneath these inland waters of Laguna Madre be classified as the bed of the sea.[87]

The respondent Sun would have proved a prima facie title by the mere introduction of its formal written leases from the State, unaccompanied by other proof, because the State of Texas is presumed to own all of the land within its boundaries. *State v. Delesdenier*, 7 Tex. 76, 96-7.

The Court of Appeals correctly concluded that the respondent Sun showed a title "which it acquired from the state or sovereign that had a good title to the submerged land in controversy."[88] "Its leases from the State, and its

---

84. R. 1837-43, 1863, 1865, 1938-40, 1942-4; 190 F. 2d 196-7, 199.

85. R. 990; P. Ex. 622, R. 972-90; Sun's (Respondent's) Original Brief, Court of Civil Appeals, pp. 142-7.

86. R. 1837-40, 1842, 1865, 1937-40; 190 F. 2d 196-7.

87. R. 1859-60, 1863, 1935-40, 1942; 190 F. 2d 194-7, 199.

88. R. 2194; 191 F. 2d 715.

proof as to the submerged character of the land, made a *prima facie* case in its behalf under our announcement of the applicable local law."[89]

Respondent recovered below upon the strength of its own title. Petitioners have no title whatever.

Is this Court interested in certiorari involving a matter that deals only with peculiar facts in this particular case, when both lower courts have concurred in fact and in law that respondent has proved a title, tested, as it must be, by local law?[90]

(4)

The respondent Sun has not made any "judicial admission" with respect to "accretion", and the lower courts were correct in so holding. (Reply to Petitioners' Specification of Error No. 4.)

Is this Court interested in granting certiorari in this case, based upon a specification of error about a procedural matter that could only involve the parties to this particular case; that could not possibly be of national importance; that could not be in conflict with any other federal or local decision?

But the lower courts were correct in holding that respondent has not made any "judicial admission" with

---

89. R. 2190; 191 F. 2d 713.

90. R. 1863, 2190, 2194; 191 F. 2d 713, 715.

respect to "accretion" that would require this Court to completely disregard and overturn the undisputed facts which support the findings of the two lower courts that "there is a regular movement of sea water, repeated many times throughout the year, over all or part of the lands in controversy"—the controlling fact inquiry. When it is determined that there is "a regular movement of sea water" over the land in controversy, then the question of alleged "accretion" becomes immaterial.[91] "There could never be an accession to the seashore, as the seashore was defined in the law of Spain, which was effective in Tamaulipas when the grant (to Padre Island) in this case was made. The seashore was defined to be 'all that ground is designated the shore of the sea which is covered with WATER of the latter during the whole year, whether in winter or in summer."[92]

In other words, petitioners would have this Court decide a moot case, as Justice Brandies said in *Swift & Co. v. Hocking Valley Ry. Co.*, 243 U.S. 281, 37 S.Ct. 287, 61 L.Ed. 722, by giving effect to what petitioners call a "judicial admission" contrary to the undisputed facts; contrary to all of the applicable local law; contrary to the findings of fact, concurred in by both lower courts, that there can be no "accretion" to the bed of the sea under local law; that there is no contiguous "accretion" as a matter of fact to the mainland grants owned by petitioners.[93]

---

91. R. 1885-6, 2190-6; 191 F. 2d 713-6.

92. State v. Balli, 144 T. 195, 251; 190 S.W. 2d 71, 100.

93. R. 1841-3, 1865, 2195, 2196; 191 F. 2d 716.

The full review of the proceedings which were had in the trial court from the close of the evidence on January 27, 1950, to the conclusion of the oral arguments on Tuesday morning, January 31, 1950, is found at pages 2000 to 2038, Volume VII of the Record in this Court.

Summarized, the chronology of events AFTER THE CLOSE OF ALL THE EVIDENCE, shows:

(1) The evidence of all parties was closed on Friday morning, January 27, 1950.[94]

(2) After the retirement of the jury, the trial court invited a discussion of questions of law; motions that would be filed by the respective parties; what issues of fact, if any, were to be submitted to an advisory jury which he had impaneled in this equity case. It was during the discussion of these questions of law, and after all the evidence of all parties had been closed, that the statements were made by counsel for the respondent Sun, which the petitioners now attempt to turn into a "judicial admission" which would contradict all the evidence introduced by all parties below; contradict the findings of fact concurred in by both lower courts; contradict the applicable local law which requires the findings of fact and conclusions of law that "accretion" cannot, as a matter of law, exist in behalf of the petitioners in this case.[95]

---

94. R. 2009.

95. R. 2009-27.

(3) Arguments on motions for instructed verdicts by all parties were commenced before the Court on January 30, 1950, and consumed that day.[96] It was in the afternoon of that day that Mr. Jones, leading counsel for petitioners, was pressed by the trial court to state if there were any controverted issues of fact, and replied:

> "It is perfectly true, of course, that the testimony, *and not the view of the lawyers on the testimony*, should be used in determining whether a fact issue exists."[97]

This statement was made by counsel for petitioners three days subsequent to January 27, 1950, the date it is now claimed by petitioners the so-called "judicial admission" was made by counsel for respondents, which would contradict the findings of fact and the conclusions of law and decrees of the two lower courts in this cause. It conclusively shows that on January 30, 1950, counsel for petitioners had not given any effect whatever to any statement that had been made by counsel for respondents on the preceding January 27, 1950, after all the evidence of all parties had been closed.

The statement that is claimed to be a "judicial admission" cannot, under either federal or local decisions, be construed as a "judicial admission". "The statement was made after the close of all the evidence; no proof was withheld by the appellants on account of it; and the dis-

---

96. R. 2027-32.

97. R. 2029-30.

charge of the jury was not a prejudicial event but was desired and urged by both sides, though for different reasons. Not every statement made by counsel casually, or in the heat of argument, or in colloquy with his adversary, is binding upon his client. It must have been deliberately made for the purpose of being used at the trial as a substitute for legal evidence of the fact. *Beattie Mfg. Co. v. Gerardi, Mo. Sup.*, 214 S.W. 189, 192; 1 Greenleaf on Evidence, Sec. 205; 1 Enc. Ev. 467; 31 C.J.S., Evidence, § 381, page 1171. *Cf. Platt v. U. S.*, 10 Cir., 163 F. 2d 165, wherein the court said that it was doubtful if the statement by appellant's attorney in respect to the matter could be construed as a stipulation as to a finding of fact, but, in any event, that parties may not stipulate the findings of fact upon which conclusions of law and the judgment of the court are to be based; that parties may by stipulation establish evidentiary facts to obviate the necessity of offering proof, but based thereon the court must itself find the ultimate facts upon which the conclusions of law and the judgment shall rest.

"In *Swift & Co. v. Hocking Valley Ry. Co.*, 243 U.S. 281, 37 S.Ct. 287, 61 L.Ed. 722, the court says that the stipulation is obviously inoperative if it is to be treated as an agreement concerning the legal effect of admitted facts, since the court cannot be controlled by agreement of counsel on a subsidiary question of law; that if the stipulation is to be treated as an attempt to agree, for the purposes of review only, that what are the facts shall be assumed

not to be facts, a moot case is presented; that the duty of every judicial tribunal is limited to determining rights that are actually controverted in the case before it; and that no stipulation of parties or counsel can enlarge the power or affect the duty of the court in this regard. The court, therefore, treated the stipulation as a nullity. This principle was adopted by the Supreme Court of Texas in *Reynolds v. McMan Oil & Gas Co.*, 11 S.W. 2d 778, 785-7, wherein the court said that expressions of opinions as to the law of the case by counsel are not binding upon either his client or the court, citing 2 R.C.L., p. 989; also 25 R.C.L. 1098."[98]

The total immateriality of petitioners' specification of error number four is found in the Court of Appeals opinion:

> "The appellants now are not complaining of the discharge of the jury in itself, but of the court having made findings of fact after having decided the case on the undisputed facts. Fed. Rules Civ. Proc. rule 52(a), 28 U.S.C.A. provides that, in all actions tried upon the facts without a jury, or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law. Moreover, after urging the elimination of the State as a party, the appellants in their original brief urged this court to decide the case on the merits if possible. In brief and oral argument, they stated that the trial was lengthy, arduous, and expensive; that the case was fully developed by both sides; and that they should consider it

98. R. 2191-2; 191 F. 2d 714.

most regrettable if the entire case should be sent back for another trial."[99]

Is this Court interested in repealing Rule 52(a)? Is this Court interested in granting certiorari about a purely procedural matter that could not be a precedent in any other case; a purely procedural matter that does not in fact have anything to do with the ultimate outcome of the case presented?

(5)

This Court is not interested in reviewing again the facts which have been concurred in by the two lower courts. (Reply to Specification of Error No. 6.)

This Court has said it is "a court of law, * * * rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271, 275; 69 S.Ct. 535; 93 L.Ed. 672.

The petitioners complain that the trial court did not adopt their evidence; did not adopt their theory of the case; did not make findings in conformity with what petitioners contend are the facts. A precise contention was made by the Government in *U. S. v. Yellow Cab Co.*, 338

---

99. R. 2192; 191 F. 2d 714.

U.S. 338, 70 S.Ct. 177, "the Government saying that the trial court 'ignored * * * substantially all of the facts which the Government deemed significant.'" Justice Jackson upheld the findings of the District Court:

> "There is no exception which permits it (the Government), even in an antitrust case, to come to this Court for what virtually amounts to a trial *de novo* on the record of such findings as intent, motive and design. * * * the Government has failed to establish any greater grievance here than it might have in any case where the evidence would support a conclusion either way but where the trial court has decided it to weigh more heavily for the defendants. SUCH A CHOICE BETWEEN TWO PERMISSIBLE VIEWS OF THE WEIGHT OF THE EVIDENCE IS NOT 'CLEARLY ERRONEOUS.'"

All of the evidence of respondent Sun showed that "there is a regular movement of sea water, repeated many times throughout the year over all or part of the lands in controversy, with regularity."[100] Thereupon petitioners introduced witnesses who had flown planes over Laguna Madre for more than a year prior to the trial; who had prepared more than five hundred separate maps that showed the daily movement of the inland waters of the sea over Laguna Madre; such maps completely confirm the testimony that had previously been introduced by the respondent Sun; so that at the close of all the evidence of all the parties, it was the uncontradicted evidence of witnesses who had been on the ground; witnesses who had been in the

---

100. R. 1840, 1940; 190 F. 2d 197.

air; witnesses who had taken photographs on the ground and from the air; as well as official maps prepared by official State and Federal authorities through the years, and every other piece of evidence, oral and documentary, that "there is a regular movement of sea water, repeated many times throughout the year over all or part of the lands in controversy, with regularity."[101]

Is this Court interested in saying that the lower courts should have violated Rule 52(a), and refused to file findings of fact, as required by that rule?

Is this Court now interested in wading through sixteen hundred pages of oral evidence and twelve hundred separate exhibits to decide for itself whether or not "there is a regular movement of sea water, repeated many times throughout the year, over all or part of the lands in controversy, with regularity"?

Petitioners' specification of error number six presents nothing of national importance; nothing that involves any conflict with any prior local or federal decisions; nothing that would appeal to the discretion of this Court to grant certiorari. It presents nothing but a plea that this court abolish Rule 52(a).

It is immaterial that there was any so-called "build-up" of the bed of Laguna Madre, when the uncontradicted facts show that the inland waters of the sea continue to this very

---

101. R. 1837-1840, 1938-1940; 190 F. 2d 196-7; P. Ex. 12-50, 92-570, 595-611, Orig.; R. 1072-6; D. Ex. 23-29, Orig.; R. 1222-4.

hour to roll upon and over the so-called "build-up" "for substantial and appreciable portions of the year".[102]

The trial court saw fit to see and hear and believe and find, that "there has not been any substantial change or building up of the area since the original surveys".[103] The trial court, who saw the exhibits; saw the witnesses; heard the testimony; lived in the community, did find that "the line of demarcation between the Laguna and the mainland is still patent for all to see".[104]

(6)

This is an action in equity to remove cloud and to enjoin petitioners from interfering with respondent's development of oil and gas under its title which it holds from the State of Texas. (Reply to Petitioners' Specification of Error No. 5 and brief thereon, page 41.)

Respondent in its amended complaint alleged:

> "Plaintiff, Sun Oil Company, is now in possession of each of said tracts of land, having camps located thereon, having made surface and geophysical surveys and other work and now exercises actual and physical possession of said lands."[105]

---

102. R. 1839, 1939, 2195; 190 F. 2d 197, 191 F. 2d 716.

103. R. 1842, 1943, 2195; 190 F. 2d 199, 191 F. 2d 716.

104. R. 1843, 1838, 1938; 190 F. 2d 196.

105. R. 67-8, 1881, 2181; 191 F. 2d 708.

The uncontroverted facts support the foregoing allegations.[106]

The uncontroverted facts and the allegations of the petitioners disclose that they are not now in possession, and have never been in possession.[107] For one hundred years that they have owned the mainland grants they have never paid taxes on the land in controversy prior to 1949.[108]

The uncontroverted facts show that Sun Oil Company has camps, machinery, employees; large markers, with its name and section numbers, on the corner of each of the sections upon which it has leases; that it drives weasels, marsh buggies and other adaptable types of conveyances upon, across and over the lands in controversy day after day, and makes use of the land in controversy consistent with ownership.[109]

The Court of Appeals found that "the record shows that it (respondent Sun) had such possession as the character of its leasehold interest entitled it to exercise."[110]

Holland v. Challen, 110 U.S. 15, 3 S.Ct. 495, 28 L.Ed. 52, completely controls this case. The very lengthy and detailed opinion of the Court of Appeals on motion for rehearing analyzing *Holland v. Challen;* analyzing the

---

106. R. 165-72, 339, 366, 368-70, 412-19, 440-52, 674-99.

107. R. 2182, 2189; 191 F. 2d 708-9, 712.

108. R. 1846, 1850, 1854.

109. See Footnote 106.

110. R. 2189; 191 F. 2d 712.

allegations of the parties; analyzing the facts, and concluding that this suit is an equitable proceeding is so excellent that we could not improve upon it by any statement or argument.[111] Suffice it to say that *Article 7364 of the Revised Civil Statutes of Texas of 1925* cannot limit the equity jurisdiction of federal courts. "Such jurisdiction is not ousted by state legislation providing a remedy by an action at law."[111a]

The Court of Appeals is correct in holding that the Texas statutes do not limit, but enlarge, the equity jurisdiction. The absence of a remedy at law must be tested by the federal decisions.[112]

Respondent Sun holds a conveyance from the State of Texas of a leasehold estate to the oil and gas under certain sections in Laguna Madre; it is entitled to the enjoyment of that estate for the drilling of oil wells; it is entitled to be freed from the embarrassment and threat of litigation evidenced by the filing by petitioners in the General Land Office of Texas and with the School Land Board of Texas of written assertions challenging its right, title and use of the leases for which it paid a large sum of money. For that very reason, "the titles to minerals in place may be freed from adverse claims by a suit to quiet title thereto, or to remove clouds therefrom."[113]

---

111. R. 2181-2206; 191 F. 2d 705-21.

111a. R. 2199; 191 F. 2d 718.

112. R. 2184-8; 191 F. 2d 711-2.

113. R. 1863, 2190-1; 191 F. 2d 713.

The equity jurisdiction of federal courts to remove clouds from title has been so long settled by so many decisions, both by this Court and by various Courts of Appeals, commencing with *Holland v. Challen*, down to and including the present time, that it is of no consequence to this Court now to grant certiorari merely for the sake of another review of that which has long since been settled.

(7)

Respondent Sun has not filed any disclaimer of its leasehold title under any of the sections in Laguna Madre. (Reply to Petitioners' Specification of Error No. 7.)

Is this Court interested in granting certiorari to determine the simple, academic question of disclaimer or no disclaimer in a case that could not have any effect upon any other parties except those to this particular suit; that could not have any national importance; that could not possibly involve any federal question; that could not possibly involve anything except the peculiar facts to this particular case, to which local law must be applied?

But, in fact, there has not been any disclaimer by respondent Sun. Respondent Sun proved its title by:

(1) Formal written oil and gas leases from the State of Texas to it, dated February 3, 1948.[114]

---

114. R. 990, 1863.

(2) Proof that the land described in those oil and gas leases is now beneath the inland waters of the sea in Laguna Madre, in that "sea water rolls over the lands in controversy throughout the year";[115]

(3) The application of the civil law, as pronounced by the Supreme Court of Texas in *State v. Balli*, "All that ground is designated the shore of the sea which is covered with the water of the latter during the whole year, whether in winter or in summer."[116]

Respondent Sun never did claim any title by accretion to Padre Island.[117] It claimed title by conveyance from the State of Texas to certain sections of land in Laguna Madre that had been officially sectionized by the State;[118] offered for lease by the State as "submerged" lands,[119] for which it paid the aggregate sum of $780,915.60;[120] received delivery of its oil and gas leases; placed them of record in the Deed Records of Kenedy County, Texas;[121] and went into possession of the lands covered by such oil and gas leases.[122]

The only claim of "disclaimer" is the statement made by respondent Sun that it did not claim title by accretion

---

115. R. 1840, 1939, 2190-1; 190 F. 2d 197, 191 F. 2d 713.

116. 144 Tex. 195, 251; 190 S.W. 2d 71, 100.

117. R. 2196; 191 F. 2d 716.

118. R. 1854.

119. P. Ex. 621, R. 973.

120. R. 990; P. Ex. 622, R. 972-90.

121. R. 990, 1477, 1486.

122. See Footnote 106.

to Padre Island. It never has claimed title by accretion to Padre Island, or to the mainland, or anywhere else.

The petitioners do not even pretend that respondent Sun has ever filed any disclaimer in this case. They attempt to use a formal statement that Sun did not claim by "accretion" to Padre Island and stretch it into a "disclaimer". Does any such contention, unsupported by the facts; of such insignificance that it was not even noted by the two lower courts, appeal to this Court as a ground for certiorari in this case?

CONCLUSION

Respondent prays that the Court refuse the writ for certiorari.

Respectfully submitted,

CHAS. D. TURNER
FRITZ L. LYNE
J. W. TIMMINS
MARTIN A. ROW
CARLTON R. WINN
Counsel for Respondent.
Sun Oil Company